IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3655 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AJABSINH @ JEBU KIRPALSINH ATHWAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3655 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/07/2003

ORAL JUDGEMENT

The detenu has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 7-12-2002 passed by the Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner at length and also perused the material on record. But learned advocate for the petitioner has restricted his argument on the point that representation has been made by the petitioner to the State Government on 25-3-2003 and same has not been decided by the authority till 31-3-2003 and communicated to the detenu on 3-4-2003 and, therefore, there is a delay in deciding the representation and communicating the same to the detenu. Learned Addl. Govt. Pleader has fairly admitted the same.

4. In the instant case, it appears that though representation has been sent to the State Government on 25-3-2003, it remained undecided till 31-3-2003 and communicated on 3-4-2003. So, there is a delay in deciding the representation. The Apex Court relying upon a decision of the Constitutional Bench in K.M.Abdulla Kunhi and B.L.Abdul Khader V. Union of India, (1991) 1 SCC 476 : (1991 AIRSCW 362), has held in a case of Rajammal Vs. State of Tamil Nadu and another reported in AIR 1999 S.C. 684 as under:

> "Detention-Unexplained delay of five days in considering and disposing detenu's representation-Mere absence of Minister at Headquarters not sufficient to justify delay-Detention vitiated."

It has been further held by the Apex Court in para 9 as under:

> "The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation.It is not enough to say that the delay was very short. Even longer delay can as well be explained. so the test is not the duration or range of delay, but how it is explained by the authority concerned."

5. In the matter before the Supreme Court in Rajammal (supra), it appeared that there was a delay of five days. For that also, explanation has been putforward by the authority that Minister was on tour for a period of two days. Still, Apex Court has stated that five days consumed in deciding the representation of the detenu is a delay. Whereas in the present case, representation has been made by the detenu on 25-3-2003 which has not been decided till 31-3-2003. Hence, there is a delay in considering the representation. Xerox copy of communication received from Home Department is ordered to be taken on record. It is to be noted that in this case no satisfactory explanation has been put forward by the respondents. As representation of the petitioner has not been decided by the authority in time, the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the order of detention illegal.

6. The petition is allowed. The impugned order of detention dated 7-12-2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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